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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Twenty-second session

SUMMARY RECORD (PARTIAL)* OF THE 421st MEETING

Held at the Vienna International Centre, Vienna
on Monday, 29th May 1989, at 2 p.m.

Chairman: Mr. RUZICKA (Czechoslovakia)

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 2.10 p.m.

DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSIT TERMINALS IN INTERNATIONAL TRADE (continued) (A/CN.9/298, A/CN.9/319 and Add.1-5, A/CN.9/321)

1. Mr. BALLEN (Andean Federation of International Transport Users' Councils), speaking on behalf of his Federation, which comprised the Councils of Bolivia, Colombia, Ecuador, Peru and Venezuela, commended the Secretariat for its efforts to promote the progressive harmonization and unification of international trade law and to remove obstacles to international trade.

2. In the case of intermodal transport, it was clear that the lack of laws and regulations covering the interval when goods were transferred from one means of transport to another gave rise to waste, loss, damage, theft and delay, which hampered the development of national production and trade.

3. With reference to the draft Convention under consideration, he stressed the need for an instrument that would harmonize and unify regulations covering the various activities involved in international transport, so that exporters and importers could obtain cargo insurance on more favourable terms and so that insurers could more readily identify those responsible for carriage and for the operation of terminals, in the event of claims on behalf of the owner of cargo. In that connection, he mentioned a case in Ecuador where, although cargo had been insured against damage to a value of $US 19 million, only five per cent of that amount had been recovered - less than $US 1 million - since the carriers had proved in court that most of the damage had occurred when the goods were not under their control.

4. He commended the Working Group on International Contract Practices for its work of preparation of the draft Convention and the Commission for having agreed upon an instrument not subject to reservations. He also asked the Commission to help, together with the Commission of the Cartagena Agreement, in promoting implementation of the various trade law conventions in the Andean countries.

Final clauses (continued)

Article F

5. The CHAIRMAN invited the Commission to consider paragraph (1).

6. Mr. INGRAM (United Kingdom), supported by Mr. SCHROCK (Federal Republic of Germany) and Mr. OCHIAI (Japan), said that an ordinal number considerably higher than the one which appeared in square brackets in the third line of paragraph (1) should be agreed upon. The Commission was engaged in drafting a convention designed to fill certain gaps in the chain of international carriage of goods and, in particular, was supplementing the Hamburg Rules. Since the draft Convention was intended to be global, he considered that the number of ratifications required should be in line with that specified in the Hamburg Rules or perhaps in the Multimodal Convention.

7. Mr. EYZAGUIRRE (Chile) supported the number proposed by the Working Group. A larger number would not be helpful since very few of the last conventions adopted had come into force in the past 15 years and, in the case of the Hamburg Rules, only 14 of the 20 ratifications required for its entry into force had been deposited. He would like to know what alternative number the United Kingdom representative had had in mind.

8. Mr. HASCHER (France) also considered five ratifications a somewhat unrealistic number. It was not in keeping with the main purpose of the Convention which was the unification of law governing liability of operators of transport terminals, which could not be achieved until many more countries had adopted the provisions of the Convention. Moreover, he did not see how it would be possible to convene the diplomatic conference called for at the preceding meeting, attended by more than 100 States, on the basis of a draft convention which required only five ratifications for its entry into force. He proposed that the number should be increased to 15.

9. Mr. YUAN Zhenmin (China) asked if the Secretariat could explain why such a low number as five had been proposed, when 20 ratifications had been required for the entry into force of the Hamburg Rules.

10. Mr. KATZ (International Trade Law Branch) explained that the word "five" in square brackets was merely a suggestion, made in the belief that the present draft Convention, although factually linked with the Hamburg Rules would nevertheless be an independent instrument not necessarily having juridical links with the Hamburg Rules. The number in square brackets was simply an indication that the Commission would have to deal with the question of the number of ratifications needed for the Convention's entry into force.

11. Mr. BERGSTEN (Secretary of the Commission) said that in the Secretariat's view there was merit in not requiring a large number of ratifications. One of the most successful international trade law conventions, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which more than 80 States were now parties, had come into force 90 days after the third ratification. None of the trade law conventions so far had achieved 20 ratifications. States tended to be reluctant to take the initiative of ratifying when they realized that they would have to await a large number of other ratifications before their own action would have any significance for them. Consequently, if the Commission wished the Convention to be a significant factor in international trade law it would be better to specify a smaller number than a larger number in paragraph (1). Whatever the number agreed upon, however, it was unlikely that the States which became parties to the proposed Convention would be the same as those which were parties to the Hamburg Rules. While the present draft text was certainly associated with the Hamburg Rules from the standpoint of drafting and legal meaning, it could not be tied to those Rules as far as its entry into force was concerned.

12. Mr. ENDERLEIN (Observer for the German Democratic Republic) agreed with the Secretary of the Commission that it was easier for some countries to accede to a convention that was in force than to one that was not yet in force. It was essential to facilitate rather than delay entry into force and he therefore supported a requirement for five or even fewer ratifications. In that connection he mentioned two conventions adopted in 1988 which required only three ratifications for their entry into force. He noted from the discussion that countries which favoured a model law tended to favour specifying a large number of ratifications. It was up to the countries which favoured harmonization and unification of law, and really desired a convention that would enter into force soon, to secure agreement on a low ratification requirement.

13. Mr. SAMI (Iraq) agreed with the remarks of the Secretary of the Commission. No one wished the proposed Convention to have the same fate as the Hamburg Rules which, 10 years after their adoption had still not come into force. In order to accommodate those delegations which considered five ratifications too low a number, he was prepared to accept 10, but that should be the ceiling.

14. Mr. GOH (Singapore) supported the previous speaker. In his opinion, five was too low a number and he was in favour of 10.

15. Mr. BONELL (Italy) said that the point under discussion had nothing to do with substantive law, procedural law or anything that might be thought to affect existing laws. The Commission was simply considering when it wished the proposed Convention to enter into force: sooner, later or never. He could well imagine that some delegations had little sympathy for the draft Convention and were not disposed to recommend acceptance of the instrument by their country: they were satisfied with the existing situation. He fully respected the position of those delegations. However, he felt that they should not press what was seemingly only a technical matter, as if it were but a number game, when everyone knew that the decision to be taken was vital for the fate of the draft Convention. His delegation supported the maintenance of the word "fifth" in the third line of paragraph (1).

16. Mr. ABYANEH (Islamic Republic of Iran) said he doubted that 10 or 20 of the 36 countries represented in the Commission were ready to become parties to the Convention. The Convention was international, not regional, and should therefore be such as to attract as many countries as possible. In his view the number of ratifications required should be increased to 10 or 15.

17. Mr. ABASCAL (Mexico) supported the number "five" for the reasons already given during the discussion. Ten ratifications was too high a requirement and would delay the entry into force of a satisfactory Convention. He shared the view that there was no essential link between the draft Convention and the Hamburg Rules.

18. Ms. PERT (Observer for Australia) supported the remarks of the Italian representative. It was important for those who favoured the draft Convention for the instrument to come into force sooner rather than later. She was therefore in favour of a requirement not exceeding five ratifications.

19. Mr. LARSEN (United States of America) said that his delegation was in favour of the Convention's entry into force sooner rather than later and would support replacement of the word "fifth" by the word "tenth" in paragraph (1).

20. Mr. YUAN Zhenmin (China) agreed with the representative of Iraq and supported a requirement for 10 ratifications. He considered five ratifications too low a number but would not object to it if it was supported by the majority.

21. Mr. SCHROCK (Federal Republic of Germany) associated himself with the position expressed by the representative of Iraq. Ten ratifications was a realistic compromise.

22. Mr. POHUNEK (Czechoslovakia) supported a requirement for five ratifications. It was important for the Convention to come into force as soon as possible, particularly in the light of the Commission's proposal that a diplomatic conference be convened.

23. Ms. VERDON (Canada) associated herself with those representatives who were in favour of maintaining the number "fifth" in paragraph (1). That was a compromise in the light of the precedent set by the two Ottawa Conventions which had called for three ratifications.

24. Mr. ZUBEIDI (Libyan Arab Jamahiriya) said that his delegation wished the draft Convention to enter into force as soon as possible. Having regard to the fact that the Hamburg Rules were still not in force after 10 years, he considered that the number of ratifications required should be five.

25. Mr. NESTEROV (Union of Soviet Socialist Republics) said that he agreed entirely with the convincing arguments of the Secretary. His delegation was in favour of using the word "fifth" in paragraph (1).

26. Ms. PIAGGI de VANOSSI (Argentina) said that the proposal that the draft Convention should come into force after five States had ratified it was a practical one.

27. Mr. TARKO (Observer for Austria) said he agreed with the proposal that five ratifications should be required. The number required should certainly not be higher than 10.

28. Mr. BALLEN (Andean Federation of International Transport Users' Councils) said that he shared the view that the present draft Convention was independent of the Hamburg Rules. It was important that the instrument should come into force as soon as possible in order to assist those, both importers and exporters, who were involved in international trade. He therefore supported the proposal that the draft Convention should come into force after the fifth instrument of ratification had been deposited.

29. The CHAIRMAN said he concluded from the discussion that the majority of the Commission were in favour of the Convention entering into force on the first day of the month following the expiration of one year from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession. In the absence of objection, he would take it that the Commission wished to refer article F, paragraph (1) to the Drafting Group on that understanding.

30. It was so decided.

31. The CHAIRMAN invited the Commission to consider paragraph (2).

32. Paragraph (2) was approved.

33. The CHAIRMAN invited the Commission to consider paragraph (3).

34. Mr. CHAFIK (Egypt) asked whether the term "State Party" should not be used instead of "Contracting State" in paragraph (3).

35. The CHAIRMAN said that that question would be dealt with in the Drafting Group.

36. Mr. AZZIMAN (Morocco) suggested that, for greater clarity, the word "international" should be inserted before the words "transport-related services" in paragraph (3).

37. The CHAIRMAN observed that articles 1 and 2 made it quite clear that the goods in relation to which services were performed were those involved in international carriage.

38. Paragraph (3) was approved.

39. Article F, as a whole, was approved.

Article G

40. The CHAIRMAN invited the Commission to consider paragraph (1).

41. Mr. ABYANEH (Islamic Republic of Iran) requested clarification of two points. Firstly, when could a request for a conference to revise or amend the Convention be made, before the Convention had entered into force or subsequently? Secondly, could such a conference be convened during the period after the deposit of the fifth instrument of ratification but prior to the actual entry into force of the Convention?

42. Mr. KATZ (International Trade Law Branch) said that the intention underlying article G was that the Convention should be in force before a conference could be requested. A similar consideration applied to the second question of the representative of the Islamic Republic of Iran, since the Convention came into force only after the prescribed period had elapsed following the deposit of the fifth instrument of ratification.

43. Mr. DJIENA (Cameroon) welcomed the explanation given by the representative of the International Trade Law Branch.

44. Ms. FERNANDEZ (Argentina) asked whether the principle approved in connection with article 17, namely that only States parties could request the convening of a meeting of a committee to consider increasing or decreasing liability limit amounts but that the committee should be composed of representatives of contracting States, applied with respect to the Conference referred to in article G. In her view it should so apply.

45. Mr. EYZAGUIRRE (Chile) considered that the words "Contracting States" in the first line of paragraph (1) should be replaced by the words "States Parties".

46. Mr. HASCHER (France) said that the use in the first line of the words "States Parties" would solve the timing problem, since there could be States parties only to a Convention already in force.

47. Mr. LARSEN (United States of America) said that he agreed with the representative of Argentina that article G should be consistent with article 17, which had already been approved.

48. Mr. MOURA-RAMOS (Observer for Portugal) supported the remarks of the United States representative.

49. Mr. DJIENA (Cameroon) agreed with the representative of France that the use of the words "States Parties" in the first line clarified the situation. However, he did not regard revision of the limits of liability in the same light as revision of the Convention itself. Article G did not have to follow the principles adopted for article 17.

50. Mr. PELLICHET (Hague Conference on Private International Law) said that the Vienna Convention on the Law of Treaties envisaged the participation of contracting States in the revision or amendment of a convention. It would therefore be permissible and appropriate to use the words "States Parties" in the first line of paragraph (1) and "Contracting States" in the third line, following the principle already approved in the case of article 17.

51. Mr. TARKO (Observer for Austria) agreed that, as with article 17, only States parties could convene a conference to revise or amend the Convention but contracting States had the right to participate in such a conference.

52. Mr. TEPAVITCHAROV (Bulgaria) agreed that article G should follow the principles approved in the case of article 17. However there was a possible alternative, the deletion of the words "of the Contracting States" in the third line of paragraph (1). Then, the Convention being in force, the States parties requesting the conference could decide what States should participate in it.

53. Mr. AZZIMAN (Morocco), Mr. ABASCAL (Mexico) and Mr. CHAFIK (Egypt) took the view expressed by the representative of Argentina.

54. Mr. SCHROCK (Federal Republic of Germany) also supported the proposal of the representative of Argentina to align article G with article 17. He had no strong feelings concerning the proposal of the representative of Bulgaria to delete the words "of the Contracting States in the third line of paragraph (1), but he knew of no precedent for the wording which would result.

55. Mr. DJIENA (Cameroon) said he had no objection to aligning article G with article 17. He wished only to insist on acceptance of the definitions of "State Party" and "Contracting State" contained in the Vienna Convention on the Law of Treaties.

56. Mr. CHAFIK (Egypt) said he understood it had been agreed that the need for conformity with the Vienna Convention on the Law of Treaties would be reflected in the report of the Commission.

57. The CHAIRMAN said it was his understanding that the majority of the Commission wished to align paragraph (1) of article G with article 17 as far as the right to convene a conference to revise or amend the Convention and the right to participate in such a conference were concerned. In the absence of objection he took it that the Commission wished to refer paragraph (1) to the Drafting Group on that understanding.

58. It was so agreed.

59. The CHAIRMAN invited the Commission to consider paragraph (2).

60. Paragraph (2) was approved.

61. Article G, as amended, was approved.

Article H

62. The CHAIRMAN, referring to the note in square brackets under article H, recalled that the question of the appropriate place in the draft Convention for the existing text of article 17 had been considered during the discussion of that article. He proposed that the question of the location of that text should be referred to the Drafting Group.

63. It was so decided.

Article I

64. Mr. SCHROCK (Federal Republic of Germany) said he wondered whether the words "Contracting State" in paragraph (1) should be replaced by "State Party" and whether that point was one of substance.

65. The CHAIRMAN said that, in his view, that was a drafting point. Only a State party to the Convention would be in a position to denounce it.

66. Article I was approved.

Article 6 (continued)

67. The CHAIRMAN invited the Commission, having regard to its decision that the draft Convention should be referred to a diplomatic conference, to consider whether the square brackets enclosing the figures in paragraph (1) of article 6 should be deleted.

68. Mr. CHAFIK (Egypt), supported by Mr. LARSEN (United States of America), Mr. NESTEROV (Union of Soviet Socialist Republics) and Mr. ABYANEH (Islamic Republic of Iran), said that the numbers of units of account specified in the paragraph should be left in square brackets. It was be preferable that the actual amounts of the limits of liability should be discussed by the largest possible number of States, as would be the case at the proposed diplomatic conference. There was no need to consider the numbers in question at present.

69. The CHAIRMAN said he took it that the Commission wished to maintain the square brackets in paragraph (1) of article 6.

70. It was so decided.

Title of the draft Convention

71. Mr. ENDERLEIN (Observer for the German Democratic Republic) recalled that the suggestion had been made that the word "trade" in the title of the draft Convention should perhaps be replaced by the words "carriage of goods". He felt that the Drafting Group should consider that question.

72. The CHAIRMAN said that the Drafting Group had received instructions to consider the question. It was his understanding, however, that there had been no specific proposal to alter the title of the draft Convention.

73. He declared the Commission's consideration of the draft Convention in first reading concluded.

The discussion covered in the summary record ended at 3.40 p.m.